IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 4512 of 2005

Between:

M/s Vijayawada Bottling Company, Ramavarappadu, Vijayawada
Rep. by its Managing Director Sri A.Satyanarayana Murthy.

..... PETITIONER

AND

1 Commercial Tax Officer, Benz Circle, Vijayawada, Krishna District.
2 Deputy Commissioner (CT), No.II, Vijayawada,
Krishna District.
3 Addl.Commissioner (CT) Legal A.P.Nampally, Hyderaad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or writs, order or direction quashing the order of the 3rd respondent in CCT's Ref.No.LV (2) 184/2005 dt.5.3.2005 refusing to grant stay of collection of disputed tax of Rs.2,35,602/- and Rs.5,20,286/- for the assessment years 1994095 and 1995096 as illegal, arbitrary and unjustified and consequently restrain the 1st respondent from taking coercive steps for recovery of the disputed tax till the disposal of the appeals by the Sales Tax Appellate Tribunal and pass such other order or orders.

Counsel for the Petitioner:Mr.S.DWARAKANATH

Counsel for the Respondents : GP FOR COMMERCIAL TAX

The Court at admission stage made the following :

O R D E R (Per TCSR,J)

The petitioner is the manufacturer of aireated water. It was assessed the tax by the Commercial Tax Officer Benz Circle, Vijayawada. The assessment was revised by the Deputy Commissioner (CT), who is the revisional authority. Petitioner carried the matter in appeal to Sales Tax appellate Tribunal. The learned Tribunal by its order dated 31.12.2001 while partly allowing the appeal, remanded the matter back to revisional authority for fresh consideration in the light of the observations *inter alia* made therein. The Deputy Commissioner (CT) by his order dated 30.12.2004 disposed of the same by confirming the earlier order, against which the petitioner carried the matter in appeal, which is now pending adjudication before the Sales Tax Appellate Tribunal. Petitioner also filed stay petition, and under the impugned order dated 5.3.2005 the Additional Commissioner (CT) dismissed the application filed by the petitioner. Petitioner is now assailing the same.

2 . The learned counsel for the petitioner represents that no assessment could legitimately be made in case of the bottle breakage charges. However, since the matter is pending consideration before the Tribunal, we are not inclined to enter into the merits of the case. Since the writ petition is directed against the order refusing to grant stay, we propose to dispose of the instant writ petition by passing usual order as under:

3. The writ petition pertains to two different assessment years.

4 . The writ petition is disposed of directing the petitioner to pay fifty per cent of the disputed tax for each assessment year, deducting the tax paid if any earlier, on or before 31.3.2005, in the event of such deposit, there shall be stay of collection of the balance tax due. On such deposit the learned Tribunal shall make an endeavor to dispose of the appeal pending before it, as expeditiously as possible.

5. Under the circumstances, no order as to costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS/RNS

DATE:10.03.2005

To

1 The Commercial Tax Officer, Benz Circle,

Vijayawada, Krishna District.

2 The Deputy Commissioner (CT), No.II, Vijayawada,
Krishna District.

3 The Addl.Commissioner (CT) Legal A.P.Nampally, Hyderaad.

4 Two CD copies

5 1 CC to MR.DWARAKANATH